

Appendix A

General Comments:

The EPA understands that the NYSDEC intends to use the Freedom of Information Law (FOIL) as the method by which the public can request and receive documents that they are entitled to view. We expect that requested documents will be provided in full and in a timely manner; FOIL exemptions cannot not be used to withhold or redact information from documents provided via this method.

Fact Sheet Comments:

Advanced Notification: This section notes that “significant operational changes” including “1) increasing the number of animals by 20%; or 2) constructing or expanding a liquid or semisolid waste storage facility greater than one million gallons” are significant changes based on a risk to water quality and public interest. The fact sheet notes that when operators submit information about such changes to the NYSDEC, it “will be made available to the public upon request”. In accordance with 40 C.F.R. 122.42(e)(6), all changes that affect the NMP must be reviewed, approved and publicized before being implemented, and substantial changes must be reviewed, approved, publicized, and subject to public comment/hearing. Neither the permit nor fact sheet clarify how members of the public will be notified about proposed NMP changes. The NYSDEC should provide clarification about how the public can learn about these opportunities to comment.

Permit Comments:

The comments outlined below each concern the public notice and state oversight of changes to the Annual Nutrient Management Plan (ANMP).

II.B.2: Change in Operation: This section requires the CAFO complete a *Change of Operation* form, signed by the owner/operator and the AEM certified planner, under six specific conditions that significantly change the facility’s operation. As noted above, all changes that affect the ANMP must be reviewed, approved and publicized before being implemented. Substantial changes must be reviewed, approved, publicized, and subject to public comment/hearing. See 40 C.F.R. 122.42(e)(6). Substantial changes are not limited to these items outlined in this section. They must include all of the types of changes listed under 40 C.F.R. 122.42(e)(6)(iii). For further reference, see also 40 C.F.R. 122.62-63.

III.E: Duty to Amend the CNMP: This section requires that changes in the operation of the CAFO or implementation of the CNMP shall be recorded in the CNMP. Owners and operators must “amend the CNMP under the direction of an AEM certified planner” and in accordance with five conditions laid out further below. We note that any changes to the CNMP that affect the minimum requirements of the NMP under 40 C.F.R. 122.42(e)(1) must also be made to the ANMP. All changes that affect the ANMP must be reviewed, approved and publicized before being implemented, and substantial changes must be reviewed, approved, publicized, and subject to public comment/hearing. See 40 C.F.R. 122.42(e)(6). Substantial changes are not limited to

these items, and must include all of the types of changes listed under 40 C.F.R. 122.42(e)(6)(iii). For further reference, see also 40 C.F.R. 122.62-63.

IV.F: Annual Nutrient Management Plan: This section outlines how changes to the ANMP may be made and identifies changes that the NYSDEC considers significant and require the submission of a revised ANMP immediately. These significant changes must be “posted to the Environmental Notice Bulletin; the public will be afforded 30 days to review, comment, and/or to request a hearing; and the Department will review the amended ANMP and will notify the applicant if the amended ANMP has been approved.” We note again that all changes that affect the ANMP must be reviewed, approved and publicized before being implemented. Substantial changes must be reviewed, approved, publicized, and subject to public comment/hearing. See 40 C.F.R. 122.42(e)(6). Substantial changes are not limited to the items listed in part IV.F of this permit; they must include all of the types of changes listed under 40 C.F.R. 122.42(e)(6)(iii). See also 40 C.F.R. 122.62-63. Any changes to the CNMP that affect the minimum requirements of the NMP under 40 C.F.R. 122.42(e)(1) must also be made to the ANMP.